

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 99-3836

United States of America,

Appellee,

v.

Celestino Ramos-Mejia, also known as
Felix Rodriguez de leon, also know as
Lucio Ramirez-Gonzales,

Appellant.

*
*
*
*
*
*
*
*
*

Appeal from the United States
District Court for the
District of Nebraska
[UNPUBLISHED]

Submitted: June 20, 2000

Filed: July 11, 2000

Before McMILLIAN, LOKEN, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

PER CURIAM.

Celestino Ramos-Mejia appeals from the final judgment entered in the District Court¹ for the District of Nebraska after he pleaded guilty to being unlawfully present in the United States following deportation, in violation of 8 U.S.C. § 1326(a) and (b)(2), sentencing him to forty-six months imprisonment and three years supervised

¹The Honorable Joseph F. Bataillon, United States District Judge for the District of Nebraska.

release. For reversal, he argues the district court erroneously believed it lacked discretion to depart on the ground that his drug felony did not warrant a sixteen-level enhancement under U.S. Sentencing Guidelines Manual § 2L1.2(a) (1998). Upon careful review of the record, we conclude that appellant raises only an unreviewable challenge to the district court's exercise of discretion not to depart under the circumstances of this case. See United States v. Johnson, 169 F.3d 569, 573 (8th Cir. 1999) (district court's discretionary decision not to depart downward is reviewable only if court acted with unconstitutional motive or believed it lacked authority to depart); United States v. Field, 110 F.3d 587, 591 (8th Cir. 1997) (district court's conclusion "under the facts of this case," that downward departure was not warranted, fairly indicated it recognized its authority to depart) (internal quotations omitted); United States v. Evidente, 894 F.2d 1000, 1004-05 (8th Cir.), cert. denied, 495 U.S. 922 (1990).

We deny the pending motion on appeal.

Accordingly, we affirm the judgment of the district court.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.